

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2202 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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S P PATEL

Versus

BHAVNAGAR MUNI. CORPN  
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Appearance:

MR MR ANAND for Petitioner  
MR JR NANAVATI for Respondent No. 1  
MR SK JHAVERI for Respondent No. 2  
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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 23/06/2000

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of transfer dated 31.3.86 passed by the respondent No.1,

Bhavnagar Municipal Corporation, transferring respondent No.3, Mr.Naval C. Mehta, from the post of Sanitary Inspector in the Health Department to the post of Shop Inspector, with effect from 1.4.86 on administrative grounds and also the seniority list prepared by the Corporation as on 1.2.78.

The petitioner has, inter alia, contended that the impugned order of transfer and the seniority list are illegal, depriving him of his right and therefore it is sought to be quashed.

A conspectus of material and relevant factual aspects may be narrated, at first.

The petitioner has been in the service of the respondent No.1, Corporation since 1st February, 1978, holding the post of Sanitary Inspector. Respondent No.2, Mr Mehta, became Sanitary Inspector with effect from 18th April, 1983, when he was promoted to the post of Sanitary Inspector, from the lower post of Junior Clerk. The petitioner has, therefore, contended that the respondent No.2 is junior to him in the cadre of Sanitary Inspector. It is also the case that in the seniority list of Sanitary Inspectors as on 1st February, 1978, the petitioner is shown at serial No.9 and the respondent No.2 has not even appeared in the seniority list of 12 persons. It is also his case that the respondent No.2, Mr Mehta, has lower educational qualification and he acquired the qualification for Sanitary Inspector post in the year 1983 when the petitioner was already a Sanitary Inspector for more than five years. The petitioner has, therefore, contended that he has higher educational qualification and he is, therefore, entitled to be transferred from the post of Sanitary Inspector to the post of Shop Inspector and not the respondent No.2. It is, therefore, the case of the petitioner that in view of the impugned order of transfer in favour of the respondent No.2, from the post of Sanitary Inspector to the post of Shop Inspector, his promotional avenue is marred. In that, he has contended that had he been transferred to the post of Shop Inspector, he would have been able to get promotion to the post of Superintendent which carries the pay scale of Rs.500-950 and for the cadre of Superintendent, there are several avenues. In short, the case of the petitioner is that in view of the impugned order of transfer in favour of respondent No.2, his promotional chances are battered whereas the chances of promotion of respondent No.2 are bettered.

The petitioner has also stated that since graduation is

necessary for being appointed as Shop Inspector as per the recruitment rules and, therefore, those persons who are graduate in the cadre of Sanitary Inspector could claim the post of Shop Inspector. He had, as such, also applied for the post of Shop Inspector. It is, therefore, alleged that respondent No.2, Mr Mehta, came to be selected directly for the post of Shop Inspector without his case being considered and respondent No.2 came to be appointed to the post of Shop Inspector, with effect from 1st April, 1986, by way of transfer, as if this was a regular transfer from one post to another in the same cadre. The petitioner has stated that these two cadres are different and there is no regular channel for transfer from one post to another post. Therefore, the impugned order of the respondent No.1 Corporation transferring respondent No.2, Mr Mehta, to the post of Shop Inspector from the post of Sanitary Inspector is challenged by the petitioner.

The learned advocates appearing for the parties, during the course of submissions, have relied on documents produced on record in support of their rival contentions. They are examined, threadbare. The respondent No.1 Corporation has also filed affidavit in reply. Affidavit in rejoinder is also filed. Respondent No.2 has filed separate affidavit in reply. Both the respondents, thus, have challenged the claims made by the petitioner in the petition. The submissions and reliance on the documentary evidence in support of their rival contentions by the learned counsels appearing for the parties have been given anxious thought and consideration.

As such, a decision rendered by this Court, today, in Special Civil Application No.3047/88, is squarely, attracted to the facts of the present case and this petition is covered by the said decision. Therefore, elaborate enumeration of facts and proposition of law, which are, virtually, common in both the petitions would not be necessary. However, a few aspects may be stated. It is evident that the post of Sanitary Inspector and Shop Inspector are in the same pay-scale and equivalent. Transfer from one post in one department to the equivalent post in the other department of the same Corporation is discretionary and is permissible in the interest of administration and for the public good. Respondent No.2, Mr. Mehta, has been transferred from the post of Sanitary Inspector to the post of Shop Inspector in the equivalent post in the same Corporation and the said transfer cannot be said to be unjust, illegal or in any way unconstitutional. The transfer in

the equivalent post falls within the discretionary domain of the master and it cannot be challenged, until it is shown to be malafide or tainted with illegality or favouritism. Nothing has been shown in the present petition. Nothing has been spelt out that the exercise of discretion of respondent No.1 Corporation in passing the impugned order by which the respondent No.2 came to be transferred from the post of Sanitary Inspector to the post of Shop Inspector is, in any way, tainted with malafide or favouritism. The discretion is exercised in the administrative interest. Such a transfer could not be said to be actuated by extraneous considerations. It is within the permissible parameters and in the discretionary domain of the Corporation. The petitioner has failed to establish any of the allegations wildly, and loudly raised in the petition. Even in respect or seniority list in so far as the challenge against the impugned order in favour of respondent No.2 is concerned, by no stretch of imagination it can be said, even for a moment, that the impugned order is in any way violative of Articles 14 and 16 of the Constitution of India.

As stated in the affidavit in reply filed by the respondent Corporation, it may be noted that the petitioner was transferred as Shop Inspector from the post of Sanitary Inspector by the order dated 13.5.88. However, he came to be suspended from the said office by the order dated 19th March, 1989, in view of the criminal prosecution launched against him for taking bribe and corruption. Subsequently, the suspension order came to be cancelled on 20th October, 1995 when the criminal case against him was pending in the Criminal Court, subject to the result of the criminal case. The petitioner was also prosecuted in Special Criminal Case No.5 of 1990 before the Special Judge, Bhavnagar and he was acquitted by the judgment and order dated 10th July 1997, against which, appeal filed by the State is pending before this Court being Criminal Appeal No.999 of 1997.

It is also noticed from the record that the petitioner Mr Patel was, directly, recruited as Sanitary Inspector for the said post. He was given charge of the post of Shop Inspector and during that period, he came to be suspended and upon revocation of suspension, he came to be posted in his original cadre of Sanitary Inspector. It is therefore, contended by the respondent No.2 that since the petitioner was recruited only for the cadre of Sanitary Inspector, he cannot claim any appointment or transfer in the cadre of Shop Inspector, except those available for promotion in the cadre, like that, Chief Sanitary Inspector. This ground raised by the respondent

No.2 is kept open since the petition is found to be baseless and meritless on the grounds stated hereinabove.

In support of the contentions, reliance is placed by the learned counsel for the petitioner on a decision of the Hon'ble Apex Court in the case of M. Hara Bhapal v. Union of India & ors., (1997) 3 SCC 561. After having given anxious consideration and serious thought, it is evident that this decision is inapplicable to the facts of the present case. It is held in that case that merely because persons are performing analogous responsibilities governed by two set of rules, they cannot be treated on par for the purpose of giving seniority. It is not understood as to why this decision is put into service in view of the fact situation of the present case. Reliance is also placed on a decision of the Hon'ble Supreme Court in the case of H.R.Ramachandraiah & anr. v. State of Karnataka & ors., (1997) 3 SCC 639. This decision is also examined threadbare. In that, the proposition of law laid down is that one category cannot be transposed by interpretation of rules and fitted into altogether different category of service to which they do not belong merely because channel of promotion in the service is not provided and they cannot claim promotion on that basis. In fact, this is the contention raised by the respondent No.2. In the light of the facts of the present case, there is no question of transposition from one post to another post in so far as the impugned order of transfer in favour of respondent No.2 recorded by the respondent No.1 Corporation is concerned. It is manifest and evident that he is transferred under administrative discretion and for administrative reasons from the post of Sanitary Inspector to the post of Shop Inspector. In case of transfer, an employee cannot claim any right. It is a matter of discretionary domain to be exercised in the administrative exigency or for the administrative reasons by the master. Therefore, the decision relied on is also not helpful to the petitioner.

In support of the submissions and the claim of the petitioner, reliance is also placed on the decision of this Court in G.M.V.D.T.O. Association v. State of Gujarat & ors., (1999) 3 GLR 1979. The proposition laid down in this decision is that the appointment to the post of Deputy Director of Transport (Admn.) Class-I made from another cadre by way of transfer ignoring the requirement of circular dated 4th May 1950 was held contrary to the guidelines, resulting into denial of promotion of candidates belonging to that department. It was, therefore, held that such an order is illegal, arbitrary and malafide. In so far as the factual situation

emerging from the record of the present case is concerned, it cannot be contended that the impugned order transferring the respondent No.2 from the post of Sanitary Inspector to the equivalent post of Shop Inspector having the same pay-scale, is in any way contrary to the guidelines of the Corporation or is in any way tainted with malafide or favouritism. Therefore, this decision is of no avail to the petitioner.

After having considered the facts and circumstances and the relevant proposition of law and the parameters of the discretionary power of transfer, this petition is meritless and is required to be rejected. Accordingly, this petition is rejected, without costs. Rule discharged.

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(vjn)